

ORIGINAL

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR

OPEN MEETING ITEM

2/12/13 - 2/13/13



0000141897

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
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ARIZONA CORPORATION COMMISSION

MEMORANDUM DOCKET CONTROL

TO: Bob Stump, Chairman
Gary Pierce, Commissioner
Brenda Burns, Commissioner
Bob Burns, Commissioner
Susan Bitter Smith, Commissioner

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

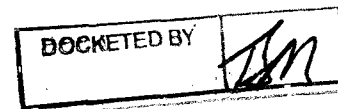
DATE: January 28, 2013

RE: Brian Langebach, Sheri Lynn Langenbach, and Earth Explorations, LLC
Docket No. S-20758A-12-0458

CC: Jodi Jerich, Executive Director

Arizona Corporation Commission
DOCKETED

JAN 30 2013



Please find attached a proposed Order to Cease and Desist, For Restitution, For Administrative Penalties, and For Other Affirmative Action ("Default Order") regarding Brian Langenbach, Earth Explorations, LLC (collectively "Respondents") and Sheri Lynn Langenbach ("Respondent Spouse"). Respondents and Respondent Spouse failed to request a hearing and failed to answer the allegations in this matter.

Respondents offered Arizona residents investments in gold mines, which promised to pay interest up to 20% plus approximately 3% of net profits from the gold mining operations. A total of \$322,000 of investor money was raised. Respondents misrepresented that they owned a mine located in one of the largest gold reserves in the United States and that they could extract gold from certain mines at a profitable, commercially, and economically viable basis by placer mining.

The Default Order finds that Respondents violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling unregistered securities while being unregistered as salesmen. The Order also finds that Respondents violated the anti-fraud provisions of A.R.S. § 44-1991 by their material misrepresentations. To deter future violations of the Act, the Default Order requires Respondents to cease and desist from violating the Securities Act, pay restitution of \$322,000 plus interest, and pay an administrative penalty in the amount of \$50,000.

Originator: Phong (Paul) Huynh

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 BOB STUMP, Chairman
5 GARY PIERCE
6 BREND A BURNS
7 BOB BURNS
8 SUSAN BITTER SMITH

9 In the matter of:

10 BRIAN PATRICK LANGENBACH and
11 SHERI LYNN BARBARA LANGENBACH,
12 husband and wife,

13 EARTH EXPLORATIONS, LLC, an
14 Arizona limited liability company,

15 Respondents.

) DOCKET NO. S-20758A-12-0458

) **ORDER TO CEASE AND DESIST, FOR**
) **RESTITUTION, FOR ADMINISTRATIVE**
) **PENALTIES, AND FOR OTHER**
) **AFFIRMATIVE ACTION**

) **RE: BRIAN PATRICK LANGENBACH,**
) **SHERI LYNN BARBARA LANGENBACH,**
) **AND EARTH EXPLORATIONS, LLC**

16 On November 7, 2012, the Securities Division ("Division") of the Arizona Corporation
17 Commission filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist,
18 For Restitution, For Administrative Penalties, and For Other Affirmative Action (the "Notice") against
19 Brian Patrick Langenbach and Earth Explorations, LLC, (collectively "Respondents"). Sheri Lynn
20 Barbara Langenbach ("Respondent Spouse") was joined in the action under A.R.S. § 44-2031(C)
21 solely for purposes of determining the liability of Respondent Langenbach's and Respondent Spouse's
22 marital community.

23 On November 30, 2012, two copies of the Notice were served via FedEx package upon Brian
24 Patrick Langenbach and Respondent Spouse at their residence located in Arizona. The FedEx package
25 was signed for by Respondent Spouse.

26 On December 4, 2012, a copy of the Notice was served on Earth Explorations, LLC, by
certified mail, to the statutory agent.

1 Respondents and Respondent Spouse have each failed to request an administrative hearing
2 within ten days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and A.A.C. Rule R14-4-
3 306. Respondents and Respondent Spouse have each failed to file an Answer within 30 days of
4 service of the Notice, pursuant to A.A.C. Rule R14-4-305.

5 **I.**

6 **FINDINGS OF FACT**

7 2. At all relevant times, Respondent BRIAN PATRICK LANGENBACH
8 (“LANGENBACH”) has been a married man and an Arizona resident.

9 3. EARTH EXPLORATIONS, LLC (“EEL”) is an Arizona limited liability company
10 organized on July 14, 2009. LANGENBACH is the manager of EEL.

11 4. Sheri Lynn Barbara Langenbach has been at all relevant times an Arizona resident and
12 the spouse of LANGENBACH. Sheri Lynn Barbara Langenbach may be referred to as “Respondent
13 Spouse.” Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
14 determining the liability of LANGENBACH’s marital community with Respondent Spouse.

15 8. At all relevant times, LANGENBACH acted for his own benefit, and for the benefit or
16 in furtherance of his marital community with Respondent Spouse.

17 **EEL Offering**

18 9. Prior to May 5, 2010, LANGENBACH discussed with an Arizona resident (“Mr.
19 G”) his plan to mine and extract ore and minerals from certain mines located in the United States.
20 LANGENBACH sought investment funding from Mr. G to make the mines operational.

21 10. On or about May 5, 2010, EEL and Mr. G’s limited liability company (hereafter
22 “MTE”) entered into a profit sharing agreement (“PSA”) that contained the following terms:

- 23 a) The Helena-Missouri River Montana Mine is the location of the mining
24 property;
- 25 b) MTE would loan EEL up to \$125,000;
- 26 c) EEL shall pay MTE a production profit up to 5% of the net proceeds;

1 d) EEL would also pay MTE interest of 20% on the loaned amount; and

2 e) EEL would repay the principal on or before November 10, 2010.

3 11. LANGENBACH signed the PSA on behalf of EEL, as its manager, and Mr. G
4 signed the PSA on behalf of MTE, as its manager.

5 12. On or about September 1, 2010, EEL and MTE entered into a second profit sharing
6 agreement that contained the same general terms above but cited the Stanton Road Project placer
7 mine as the new mining location and an amount of \$125,000 would be loaned from MTE to EEL.

8 13. Mr. G invested approximately \$25,000 with LANGENBACH.

9 14. Other than providing money to Respondents, Mr. G did not have any part in the
10 day-to-day operations of EEL, had no prior gold mining experience, and was not a member or
11 manager of EEL.

12 15. Though Mr. G invested approximately \$25,000 with LANGENBACH, he did not
13 have the funds to invest the remaining agreed to amount.

14 **MTE Offerings**

15 16. On or about March 23, 2010, the Division served LANGENBACH with an
16 administrative subpoena requesting certain documents regarding an offer and sale of an unrelated
17 unregistered security. On September 21, 2010, the Division filed a Notice of Opportunity
18 regarding a proposed order to cease and desist, order for restitution, order for administrative
19 penalties, and order for other affirmative relief ("Notice") against LANGENBACH in that matter
20 under Docket No. S-20758A-10-0384.¹

21 17. After being served an administrative subpoena and the Notice in the above matter,
22 Respondents used Mr. G and MTE to raise money to fund Respondents' Business operations for
23 the Mines.

24
25
26 ¹ On November 8, 2010, Brian Langenbach entered into a consent agreement in this matter in Decision No. 71962.

1 18. In order to raise additional funds, LANGENBACH recommended to Mr. G that he
2 solicit investments in MTE from shareholders of another company that LANGENBACH had
3 offered or sold prior investments to.

4 19. To aid Mr. G in raising money from investors, Respondents instructed Mr. G to
5 create profit sharing agreements that were substantially similar to the PSA entered between EEL
6 and MTE. As a result, MTE created a profit sharing agreement with provisions that were nearly
7 identical to the PSA agreements entered into between EEL and MTE (hereafter "MTE PSA").

8 20. At all relevant times, Respondents, directly or through Mr. G and MTE, represented
9 to offerees and investors within and from Arizona that Respondents were engaged in the gold
10 mining and mineral processing business (the "Business").

11 21. At all relevant times, Respondents, directly or through Mr. G and MTE, represented
12 to offerees and investors, both verbally and in writing, that Respondents had acquired interests in
13 various gold mines including the: (a) "Stanton Road Placer mine" located "in one of the richest
14 gold reserves in the US," and near the previously profitable "Rich Hill" and "Alvarado" gold mines
15 outside of Congress, Arizona; and/or (b) the "Helena-Missouri River Montana Mine" near Helena,
16 Montana (the "Mine(s)"). EEL would operate the Mines and share with MTE and investors the
17 resulting gold mining profits (the "Gold Mine Investment").

18 22. LANGENBACH directly offered and sold the Gold Mine Investments to at least 4
19 Arizona residents.

20 23. The Gold Mine Investments are documented, in part, by written prospectuses
21 prepared and/or drafted by Respondents, titled "**MT Explorations, LLC – Stanton Road Placer**
22 **Mine Project - Investment Opportunity**" (the "Prospectus(es)"). (emphasis in original).

23 24. The Prospectus stated that MTE had negotiated a profit sharing agreement with
24 EEL.

25 25. The majority of the Prospectus is dated "2010," and stated that the "Phase I" Gold
26 Mine Investment offering resulted in \$125,000 worth of investment capital used by Respondents to

1 purchase "pre-production" gold mining equipment, and created a pool of "operating capital in
2 reserves until the [gold extraction] process provides metal which can be sold."

3 26. The Prospectuses further stated that the proceeds of the "Phase II" Gold Mine
4 Investment offering totaling \$125,000 would be used by Respondents to purchase additional
5 equipment, to achieve full gold production, and "for testing and continued development of the
6 Project."

7 27. Regarding potential Gold Mine Investment profits, the Prospectuses noted that the
8 "Rich Hill" gold mine is located "in the same area" as one of Respondents' Mines that had
9 previously produced "potato sized" gold nuggets.

10 28. The Prospectuses stated that when operating at full production, Respondents'
11 Business would result in the production of one hundred ounces of gold per day, and assuming a
12 spot price of gold of \$1,200 per ounce, approximately \$46,800 would be paid to MTE each month.

13 29. The Prospectuses stated that MTE and investors would share in the profits generated
14 by Respondents' Business. Regarding estimated Gold Mine Investment profits, the Prospectuses
15 include a section titled "**ROI Estimates**" (*i.e.*, return on investment) that explained that each
16 investor could expect to receive approximately \$3,744.00 per month, for every \$10,000 amount
17 invested when operated at full production (emphasis in original).

18 30. The Prospectuses further estimated that an investor who purchased a Gold Mine
19 Investment in the principal amount of \$25,000 could expect to receive profits \$4,680 per month if
20 the Business was operating at fifty percent production, and up to \$9,360 per month if the Business
21 was operating at one hundred percent production, in part as follows:

Amount Invested	Royalty at 50% Production	Royalty at 100% Production
\$10,000	\$1872.00	\$3744.00
\$25,000	\$4680.00	\$9360.00
\$50,000	\$9360.00	\$18720.00

25 31. The Prospectuses are not labeled as confidential, nor did they state that the Gold
26 Mine Investments may only be purchased by, for instance, sophisticated or accredited investors.

1 The Prospectuses further failed to include any stated restrictions preventing a recipient from
2 distributing the Prospectuses to third parties who, for instance, have no preexisting relationship
3 with Respondents or knowledge of Respondents' gold mining Business operations.

4 32. Respondents, directly or through Mr. G and MTE, further represented to offerees
5 and investors that the Mines contained high quality minerals and ore from which gold can be
6 extracted on a cost effective or economically viable basis.²

7 33. Respondents would pay MTE, who would then redistribute the principal and interest
8 payments to each individual investor.

9 34. Certain MTE PSAs contained the following relevant terms:

- 10 a) MTE shall pay the investor a production profit up to 3% of the net proceeds;
11 b) MTE would also pay interest of 20% on the loaned amount; and
12 c) MTE would repay the principal on or before March 30, 2011.

13 35. The MTE PSAs included each investor's promised percentage of projected Business
14 profits based, in part, on the amount of the investor's principal investment.

15 36. Some investors agreed to the 3% of production profit of net proceeds and 20%
16 interest, while others agreed to only the 3% of production profit of net proceeds.

17 37. For instance, one Arizona resident purchased a Gold Mine Investment on or about
18 October 5, 2010, in the principal amount of approximately \$25,000. This investor's MTE PSA
19 states that the investor is entitled to receive up to 3% of the net profits generated by the Business.

20 38. Similarly, another Arizona resident purchased a Gold Mine Investment in the
21 principal amount of \$20,000 on or about October 12, 2010. This investor's MTE PSA states that
22

23 ² Pursuant to mining industry customs and standards, "ore" possesses an economic meaning. "*Ore*" is a
24 form of rock or other mineral matter that can be mined, processed for its valuable contents and sold *at a*
25 *profit* under current technological and economic conditions, including overhead costs such as the
26 construction and development of a physical plant, ore extraction and transportation, labor, investment
sales commissions, procurement and development of technologies, testing and refining costs. Tens of
thousands of samples of rocks and other mineral matter are submitted to assay laboratories annually; only
a fraction of them turn out to be ore. Thus, "ore" is often incorrectly used to mean any rock associated
with a mining claim.

1 the investor is entitled to receive up to 3% of the net profits generated by the Business and 20%
2 interest based on the actual funds loaned from MTE to EEL.

3 39. Investors purchased their Gold Mine Investments by making their principal
4 investment checks payable to MTE or EEL.

5 40. In certain instances, though LANGENBACH directly offered and sold the Gold
6 Mine Investments to certain investors, he processed the investments through Mr. G and MTE so
7 that the investors appeared to be MTE investors.

8 41. All investor funds received by MTE were ultimately forwarded to LANGENBACH
9 or EEL to be used for the gold mining Business operations.

10 42. From on or about May 2010, to November 2010, Respondents issued, offered, and
11 sold the Gold Mine Investments within and from Arizona.

12 43. Respondents, directly or through Mr. G and MTE, sold \$322,000.50 of the Gold
13 Mine Investments to twenty-three investors residing in Arizona, Ohio, and Utah for principal
14 amounts ranging in price from \$2,000 to \$45,000.

15 44. To date, however, investors have received no returns and/or profits from
16 Respondents on their investments.

17 45. At all relevant times, Respondents, directly or through Mr. G and MTE, represented
18 to offerees and investors that Respondents would manage the essential aspects of the Business
19 including the negotiation and execution of third-party mining agreements and management of Gold
20 Mine Investment funds.

21 46. Unbeknownst to offerees and investors, Respondents' and their affiliates' so-called
22 "Stanton Road Placer" Mine is not located in one of the largest gold reserves in the United States.

23 47. Unbeknownst to offerees and investors, neither Respondents or their affiliates or
24 agents are able to extract gold from the rock material or aggregate material present at the Mines on
25 a profitable, commercially, and economically viable basis by placer mining.

48. The EEL and MTE investments have not been registered with the Commission as securities.

49. At all relevant times, Respondents have not been registered with the Commission as securities salesmen or dealers.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, or (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

4. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. §§ 44-2032.

5. Respondents' conduct is grounds for an administrative penalties under A.R.S. §§ 44-2036.

6. Respondent LANGENBACH acted for the benefit of his marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the community.

III. ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

1 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032, that Respondents, and any of
2 Respondents' agents, employees, successors and assigns, permanently cease and desist from
3 violating the Securities Act.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, jointly and
5 severally shall pay restitution to the Commission in the principal amount of \$322,000.50, plus
6 interest from the date of purchase until paid in full, subject to legal setoffs pursuant to A.A.C. R14-
7 4-308, as shown on attached Exhibit A. Payment is due in full on the date of this Order. Payment
8 shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the
9 Commission.

10 IT IS FURTHER ORDERED that restitution ordered hereinabove shall bear interest at the
11 rate of the lesser of ten percent per annum or at a rate of per annum that is equal to one percent plus
12 the prime rate as published by the board of governors of the federal reserve system in statistical
13 release H.15 or any publication that may supersede it on the date that the judgment is entered.

14 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
15 records of the Commission. Any restitution funds that the Commission cannot disburse because an
16 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
17 investor because the investor is deceased and the Commission cannot reasonably identify and
18 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
19 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
20 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
21 shall be transferred to the general fund of the state of Arizona.

22 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents,
23 individually, and the marital community of Respondents and Respondent Spouse, jointly and
24 severally shall pay an administrative penalty in the amount of \$50,000. Payment is due in full on
25 the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding
26 shall accrue interest as allowed by law.

1 IT IS FURTHER ORDERED that the penalty ordered hereinabove shall bear interest at the
2 rate of the lesser of ten percent per annum or at a rate per annum that is equal to one percent plus
3 the prime rate as published by the board of governors of the federal reserve system in statistical
4 release H.15 or any publication that may supersede it on the date that the judgment is entered.

5 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
6 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
7 shall be applied to the penalty obligation.

8 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the
9 Commission may bring further legal proceedings against them, including application to the superior
10 court for an order of contempt.

11 IT IS FURTHER ORDERED, that pursuant to A.R.S. § 44-1974, upon application the
12 Commission may grant a rehearing of this Order. The application must be received by the
13 Commission at its offices within twenty calendar days after entry of this Order. Unless otherwise
14 ordered, filing an application for rehearing does not stay this Order. If the Commission does not
15 grant a rehearing within twenty calendar days after filing the application, the application is
16 considered to be denied. No additional notice will be given of such denial.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(PTH)

EXHIBIT A

<u>Investor Reference</u>	<u>Investment Date (if interest ordered from date of investment)</u>	<u>Original Investment Amount</u>	<u>Pre-Order Interest: Date to Order Date (10% to 1/30/13)</u>	<u>Less Principal Repaid</u>	<u>Restitution owed at order date</u>
A-1	10/06/10	25,000.00	5,801.37		30,801.37
B-1	11/01/10	5,000.00	1,124.66		6,124.66
C-1	07/29/10	20,000.00	5,019.18		25,019.18
D-1	10/07/10	5,000.00	1,158.90		6,158.90
E-1	07/07/10	5,000.00	1,284.93		6,284.93
E-3	10/12/10	20,000.00	4,608.22		24,608.22
F-1	10/04/10	5,000.00	1,163.01		6,163.01
G-1	07/26/10	50,000.00	12,589.04		62,589.04
H-1	08/16/10	2,000.50	492.18		2,492.68
I-1	10/04/10	15,000.00	3,489.04		18,489.04
J-1	10/29/10	20,000.00	4,515.07		24,515.07
K-1	10/15/10	25,000.00	5,739.73		30,739.73
L-1	08/12/10	10,000.00	2,471.23		12,471.23
M-1	11/01/10	10,000.00	2,249.32		12,249.32
N-1	08/11/10	20,000.00	4,947.95		24,947.95
O-1	08/13/10	5,000.00	1,234.25		6,234.25
P-1	05/28/10	10,000.00	2,679.45		12,679.45
Q-1	08/16/10	10,000.00	2,460.27		12,460.27
R-1	10/15/10	20,000.00	4,591.78		24,591.78
S-1	06/17/10	5,000.00	1,312.33		6,312.33
T-1	08/05/10	10,000.00	2,490.41		12,490.41
U-1	08/12/10	25,000.00	6,178.08		31,178.08
	Subtotals	322,000.50	77,600.40	-	399,600.90

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Total Restitution owed at Order Date: 399,600.90

1 SERVICE LIST FOR: Brian Patrick Langenbach, et. al., Docket No. S-20758A-12-0458

2

3 Brian Patrick Langenbach and Sheri Lynn Barbara Langenbach
4 8642 E. Waterford Circle, Mesa, AZ 85212

5 Earth Explorations, LLC
6 C/O Richard Berry
7 3415 S. McClintock Dr. Ste. 112, Tempe, AZ 85282

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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3 COMMISSIONERS

4 BOB STUMP, Chairman
5 GARY PIERCE
6 BREND A BURNS
BOB BURNS
SUSAN BITTER SMITH

7 In the matter of:

DOCKET NO. S-20758A-12-0458

8 BRIAN PATRICK LANGENBACH and SHERI
9 LYNN BARBARA LANGENBACH, husband
and wife,

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

10 EARTH EXPLORATIONS, LLC, an Arizona
11 limited liability company,

12 Respondent.

13 Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease
14 and Desist, Order for Administrative Penalties, and Consent to Same by the above-referenced
15 Respondents was filed with the Arizona Corporation Commission's Docket Control.

16
17 Dated: 1/30/13

By: 

18 I hereby certify that I have this day served the foregoing document on all parties of record
19 in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

20 Brian and Sheri Lynn Langenbach
21 8642 E. Waterford Circle
22 Mesa, AZ 85212

23 Earth Explorations, LLC
24 C/O Richard Berry
3415 S. McClintock Dr. Ste. 112
Tempe, AZ 85282

25 Dated: 1/30/13

By: 

26
Decision No. _____